

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works, Engineering and Construction Division

**DATE:** July 5, 2022

**REQUESTED ACTION:** Authorize the County Manager to sign an Interlocal Agreement with Clark Public Utilities for the relocation of poles, electrical lines, and other facilities necessary to construct the Northeast 119th Street and Northeast 152nd Avenue intersection improvement project.

  X   Consent                             Hearing                             County Manager

---

### BACKGROUND

Construction of the Northeast 119th Street and Northeast 152nd Avenue intersection improvements will require Clark Public Utilities, or CPU, to relocate several poles, electrical lines, and service equipment. These are located within easements that CPU had previously obtained from private landowners, and that are now within land acquired by the County for the construction project. The footprint of the current electrical infrastructure is reflected on the last page of the attached inter-local agreement.

Because the electrical infrastructure impacted by the project is located within CPU's easements, the County will reimburse the utility for the relocation of the impacted infrastructure. The estimated cost of the relocation work is \$87,694. The agreement establishes the relationship between the County and CPU and defines the responsibilities and obligations for the relocation work. The cost to reimburse CPU is included in the overall project budget.

### COUNCIL POLICY IMPLICATIONS

None. This project supports the council's policy of providing a safe and efficient transportation system for all county residents.

### ADMINISTRATIVE POLICY IMPLICATIONS

None. This project is included in the 2022-2027 Transportation Improvement Program, 2023 Annual Construction Program, and the 2023 Budget under Project #300222.

### COMMUNITY OUTREACH

This project has solicited and will solicit public input through many sources. Clark County has sent out "Heads Up" mailers to residents and property owners in the area. Details about this project can also be found on Clark County's website at <https://clark.wa.gov/public-works/ne-119th-st-ne-152nd-ave>.

The development of the 2022-2027 TIP included Clark County Council work sessions, as well as presentations to the Clark County Planning Commission and the Development and Engineering Advisory Board. The TIP was also the subject of a digital-media campaign earlier this year in which the posts received more than 23,000 impressions. The TIP will also be displayed and discussed at several future online public open houses.

PW22-115

REVIEWED: LES

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

**BUDGET DETAILS**

Local Fund Dollar Amount	\$ 87,694
Grant Fund Dollar Amount	\$0
Account	1012 – County Road Fund
Company Name	Clark Public Utilities

**DISTRIBUTION:**

Council staff will post all staff reports to the web. <https://www.clark.wa.gov/council-meetings>

**ATTACHMENTS:** (1) Interlocal Agreement

*Brian Vincent*

Brian S. Vincent, PE  
County Engineer

*Sherry Villafane*

Sherry Villafane  
Public Works Department Finance Manager

*Eva Haney*

Eva Haney, CGFM  
Public Works Director

Primary Staff Contact: Scott Sawyer, Ext. 4364

**APPROVED:** \_\_\_\_\_

**CLARK COUNTY, WASHINGTON**  
**CLARK COUNTY COUNCIL**

**DATE:** \_\_\_\_\_

**SR#** \_\_\_\_\_

PW22-115

REVIEWED: LAS

**INTERLOCAL AGREEMENT BY AND BETWEEN  
CLARK COUNTY AND  
CLARK PUBLIC UTILITIES**

**Overhead Electric Line Relocation and Conversion, NE 119<sup>th</sup> St and NE 152<sup>nd</sup> Ave**

This Interlocal Agreement (the “Agreement”) is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between Clark County (the “County”), political subdivision of the state of Washington with an address of P.O. Box 9810, Vancouver, WA 98666-9810, and Clark Public Utilities (“CPU”), a municipal corporation with an address of P.O. Box 8900, Vancouver, WA 98668 on the dates indicated below. The County and CPU are sometimes collectively referred to as the “Parties” or to either one individually as a “Party.”

**RECITALS**

**WHEREAS**, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington provides for cooperative efforts between governmental entities; and

**WHEREAS**, the County has concluded that construction of road improvements at the intersection of NE 119th Street and NE 152nd Avenue (the “Project Area”) is necessary; and

**WHEREAS**, CPU owns certain facilities in the Project Area, some of which are located on easements, which must be relocated or adjusted in order to complete the County’s road improvement project; and

**WHEREAS**, the County desires these facilities be relocated elsewhere or adjusted in order to allow the project to proceed; and

**WHEREAS**, CPU has requested compensation from the County for the performance of relocation work, as necessary, for those CPU facilities that were constructed within easements; and

**WHEREAS**, both the County and CPU agree that it is in the best interests of the Parties to collaborate on the relocation work in a timely and cost-effective manner;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, the Parties hereby mutually agree as follows.

**AGREEMENT**

1. **PURPOSE.** This Agreement is entered into pursuant to the authority of RCW 39.34.080. The purpose of this Agreement is to set forth the mutual obligations, responsibilities and rights of the County and CPU relating to the relocation of CPU facilities as described herein.
2. **TERM.** This Agreement shall become effective upon the date of last signature of the Parties below, and shall continue until December 20, 2024 or until the relocation work has been completed by CPU and accepted by the County (in a timely manner) and the County has paid CPU in full, whichever is later, unless terminated sooner.

3. ADMINISTRATION. No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties hereto shall be jointly responsible for administering the performance herein. The Parties will not acquire any jointly owned real or personal property in connection with performance of this Agreement. The Parties shall each be responsible for their own individual financial costs of performance of this Agreement, except as otherwise described herein. No joint budget will be prepared to carry out the performance of this Agreement.
4. TERMINATION. This Agreement may only be terminated if mutually agreed to by both Parties. Should this Agreement be terminated prior to completion of the relocation work by CPU, the County agrees to compensate CPU for the relocation costs incurred by CPU for work performed up to that date.
5. SCOPE OF WORK.
  - a. CPU agrees to adjust and relocate existing electrical facilities on behalf of the County to accommodate construction of the road improvements at intersection of NE 119th Street and NE 152nd Ave, as shown on the attached Exhibit "A".
  - b. CPU currently has agreements with communications companies and allows joint use contacts along the Project Area's existing pole alignment. The County agrees to work with these companies to ensure their facilities are relocated in a timely manner. CPU shall not be responsible for the relocation of joint use facilities or the cost thereof.
6. PAYMENT.
  - a. CPU agrees that it shall initially pay for the actual direct and related indirect costs of the adjustments and relocation, including but not limited to, permitting, property rights (including acquiring replacement easements), materials, construction, construction engineering, contract administration and overhead costs, associated with the County Relocation Work.
  - b. The County agrees to provide reimbursement to CPU for the actual direct and related indirect costs of the County Relocation Work, which is currently estimated to be Eighty-Seven Thousand, Six Hundred Ninety-Three and 38/100 Dollars (\$87,693.38), excluding applicable sales tax.
  - c. CPU shall invoice the County and provide supporting documentation thereof, and the County agrees to pay CPU within thirty calendar days of receipt of an invoice.
7. DISPUTE RESOLUTION. In the event of a dispute between the County and CPU regarding performance of this Agreement, the Parties shall proceed as follows:
  - a. The County Manager of the County and the General Manager of CPU, or their designated representatives, shall first review such dispute and provide the Parties options for mutual resolution of the dispute.

- b. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the County Manager of the County and the General Manager of CPU, or their designated representatives, may be submitted to mediation and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
8. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. CPU shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of a Party an employee of the other Party for any purpose, including but not limited to, for withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.
9. INDEMNIFICATION. To the extent authorized by law, the County and CPU shall indemnify and hold harmless one another, and their respective employees and/or officers, from, and shall process and defend at their own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind of nature, brought against one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement; provided however, that if such claims are caused by or result from the concurrent negligence of (a) the County and (b) CPU, this indemnity provision shall be valid and enforceable only to the extent of the negligence apportioned to the respective party, and provided further, that nothing herein shall require the County or CPU to hold harmless or defend each other for any claims arising from that Party's sole negligence or that of its employees and/or officers. Notwithstanding the foregoing, since the County is directing CPU to install materials that may not be compliant with the Buy America requirements, CPU shall not be responsible to the County for any loss, claim, penalty, or expense attributed to a violation of the Buy America requirements and the County shall indemnify and defend CPU from any such claim, loss, penalty, or expense, provided CPU has adhered to the scope and documentation requirements of Section 5.a. above. The terms of this section shall survive the termination of this Agreement.
10. AMENDMENTS. This Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.
11. ASSIGNMENT. No Party hereto shall assign its rights or obligations under this Agreement without the prior written consent of the other Party hereto.
12. NOTICES. All communications, notices and demands of any kind which are required by this Agreement shall be in writing and shall be deemed given when deposited in the U.S. mail, first class postage prepaid, to the following addresses or to such other addresses as the Parties shall from time to time give notice to the other Parties:

If to the County:

If to CPU:

Clark County  
Attn: Scott Sawyer  
P.O. Box 9810  
Vancouver, WA 98666-9810

Clark Public Utilities  
Attn: Jonathan Pilling  
P.O. Box 8900  
Vancouver, WA 98668

13. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
14. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned herein, and no prior agreements shall be effective to the contrary.
15. FILING. Executed copies of this Agreement shall be filed as required by RCW 39.34.040; or alternatively, listed on the Parties' respective web sites or other electronically retrievable public source.
16. SEVERABILITY. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.
17. RATIFICATION. Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.
18. GOVERNING LAW. This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. By signing below, each Party warrants that it has legal authority to enter into this Agreement.

**IN WITNESS HEREOF**, the authorized representatives of the Parties have executed this Agreement on the dates indicated below.

For the **COUNTY**:

For **CPU**:

**CLARK COUNTY, WA**

**CLARK PUBLIC UTILITIES**  
A municipal corporation

By: \_\_\_\_\_  
Kathleen Otto, County Manager

By: \_\_\_\_\_  
Lena Wittler, General Manager

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

Approved as to Form:  
Anthony F. Golik

Approved as to Form:

By: Bill Richardson  
William Richardson  
Deputy Prosecuting Attorney

By: John Eldridge  
John Eldridge  
CPU General Counsel

